



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2018-0490; FRL-9982-74-Region 3]**

**Air Plan Approval; Maryland; Continuous Opacity Monitoring Requirements for Municipal Waste Combustors and Cement Plants**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland (SIP Revision 16-04). This revision pertains to clarifying continuous opacity monitoring requirements and visible emission standards for municipal waste combustors (MWCs) and Portland cement plants. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0490 at <http://www.regulations.gov>, or via email to [Spielberger.susan@epa.gov](mailto:Spielberger.susan@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814-2181, or by e-mail at [pino.maria@epa.gov](mailto:pino.maria@epa.gov).

**SUPPLEMENTARY INFORMATION:** On May 10, 2016, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to clarify visible emissions (VE) and continuous opacity monitor (COM) requirements for MWCs and Portland cement plants. On February 28, 2018, MDE submitted to EPA a clarification letter from MDE Secretary Ben Grumbles to EPA Regional Administrator Cosmo Servidio, withdrawing definitions for continuous burning and operating time, COMAR 26.11.01.01B(8-1) and (27-1), respectively. EPA acknowledged the withdrawal in a letter dated June 20, 2018 from EPA Region 3 Air Protection Division Director, Cristina Fernandez to MDE Secretary Ben Grumbles. That portion of the submittal is longer pending before EPA.

## **I. Background**

The revision consists of amendments to Regulation .10 under COMAR 26.11.01, General and Administrative Provisions, and Regulation .04 under COMAR 26.11.08, Control of Incinerators.

These amendments clarify requirements for MWCs and Portland cement plants that demonstrate compliance with VE standards through use of continuous opacity monitors (COMs). Following the initial revision, MDE withdrew the definitions for continuous burning and operating time, COMAR 26.11.01.01B(8-1) and (27-1) respectively, as amendments to Regulation .10 under COMAR 26.11.01, from EPA's consideration for inclusion into Maryland's SIP. MDE is in the process of repealing these definitions under a separate rulemaking. This will ensure consistency between MDE's state regulations and Maryland's federally enforceable SIP.

## **II. Summary of SIP Revision and EPA Analysis**

### *A. Amendments to COMAR 26.11.01.10, Continuous Opacity Monitoring Requirements*

1. Under COMAR 26.11.01.10A, Applicability and Exceptions, MDE had added a new section, numbered 6 (COMAR 26.11.01.10A(6)). This new section 6 requires sources that cannot comply with VE limits to request approval of alternate VE limits following the recommendations at 80 FR 33980. Alternative limits must be approved by MDE and then submitted to EPA for approval into the Maryland SIP. This amendment to the Maryland SIP is acceptable to EPA, as it complies with EPA's requirements for alternative limits at 80 FR 33980 and requires EPA's approval of any alternate VE limits into the Maryland SIP.

2. Under COMAR 26.11.01.10B, General Requirements for COMs, section 3 (COMAR 26.11.01.10B(3)) is amended to clarify that a COM must comply with the applicable requirements in 40 CFR part 51, appendix P in its entirety. The previous SIP-approved section 3 specified that the only requirements in 40 CFR part 51, appendix P that applied were sections 3.3 – 3.9. This amendment is acceptable to EPA, as 40 CFR part 51, appendix P, Minimum Emission Monitoring Requirements, sets out the minimum requirements for continuous emission monitoring and recording.

3. Under COMAR 26.11.01.10B, General Requirements for COMs, MDE added a new section 5 to clarify COM requirements for the owners and operators of cement kilns and clinker coolers that are operating a COMs.

- New subsection 5a (COMAR 26.11.01.10B(5)(a)) states that owners and operators of cement kilns or clinker coolers may not cause or permit the discharge of emissions which exceed the visibility standards in COMAR 26.11.30.05B, Visible Emission Standards, which is already approved into the Maryland SIP. This new subsection is simply clarifying existing, SIP-approved requirements. Therefore, this amendment is approvable.
- New subsection 5b (COMAR 26.11.01.10B(5)(b)) states that visibility standards in COMAR 26.11.30.05B(1) and (2) do not apply to emissions as specified in COMAR 26.11.06.02A(2) during EPA reference Method 9 observations. COMAR 26.11.06.02A(2) is already approved into the Maryland SIP. This new subsection is clarifying existing, SIP-approved requirements. Therefore, this amendment is approvable.
- The new subsection 5c (COMAR 26.11.01.10B(5)(c)) clarifies a requirement in COMAR 26.11.30.05B(2), which prohibits VE “visible to human observers.” New subsection 5c specifies that, when a cement kiln or clinker cooler is using a COM, VE “visible to a human observer” are equal to or greater than 10 percent opacity. This interpretation of “not visible to human observers” was previously SIP-approved in Maryland’s “Technical Memorandum 90-01 Continuous Emission Monitoring (CEM) Policies and Procedures” (TM 90-01), which established Maryland’s policy for state enforcement of Maryland’s CEM requirements found in COMAR 26.11.01.10 and 26.11.01.11. As stated on page four of TM 90-01, “The Department has determined that a human observer will report an opacity of between zero and 10 percent as no visible emissions.” TM 90-01 is available for reference in the docket for

this rulemaking, Docket ID No. EPA-R03-OAR-2018-0490, at <http://www.regulations.gov>. EPA approved TM 90-01 into the Maryland's SIP on February 28, 1996. *See* 61 FR 7418. However, over the course of several years, MDE decided to directly incorporate certain requirements contained in TM 90-01 into the text of Maryland's regulations instead of merely referring to TM 90-01 in the regulatory text and discontinued the use of TM 90-01. In a series of rulemakings, MDE incorporated provisions from TM 90-01 into Maryland's COMAR regulations and removed references to TM 90-01 from the SIP. An earlier SIP revision, Maryland's SIP Revision #15-05, submitted on November 24, 2015 and clarified and amended on February 26, 2016, included, among other amendments, revisions to COMAR 26.11.01.10 that removed references to TM 90-01. EPA approved Maryland's SIP Revision #15-05 on November 7, 2016 (81 FR 78048). Maryland's SIP Revision #16-04, the subject of this rulemaking, moved the interpretation of "not visible to a human observer" from TM 90-01 into COMAR 26.11.01.10B(5)(c) and 26.11.01.10B(6)(b). SIP Revision #16-05, which Maryland also submitted on May 10, 2016, removed references to TM 90-01 for MWCs in COMAR 26.11.08.08. On May 31, 2018 (83 FR 24940), EPA approved Maryland SIP Revision #16-05. Because new subsection 5c is merely moving SIP-approved provisions from discontinued TM 90-01 into Maryland's COMAR regulations, this amendment is approvable.

- The new subsection 5d (COMAR 26.11.01.10B(5)(d)) clarifies that for owners or operators of cement kilns or clinker coolers operating COMs, compliance with VE standards is achieved if visible emissions do not exceed the applicable VE limitations in 26.11.30.05B(1) or (2), as applicable. This new subsection is clarifying existing, SIP-approved requirements. Therefore, this amendment is approvable.

- The new subsection 5e (COMAR 26.11.01.10B(5)(e)) states that MDE may determine compliance with VE limits by performing EPA Method 9 observations, notwithstanding the requirements of 26.11.01.10B(5)(a)-(d). Method 9 is an approved EPA test method for VE compliance. Therefore, this amendment is approvable.
  - New subsection 5f (COMAR 26.11.01.10B(5)(f)) requires owners and operators of cement kilns or clinker coolers operating COMs to meet the quality assurance requirements under COMAR 26.11.31, Quality Assurance Requirements for Continuous Opacity Monitors (COMs). COMAR 26.11.31 is approved into the Maryland SIP. *See* 81 FR 78048. This new subsection is clarifying existing, SIP-approved requirements. Therefore, this amendment is approvable.
4. Under COMAR 26.11.01.10B, General Requirements for COMs, MDE added a new section 6 to clarify COM requirements for the owners and operators of MWCs that are required to install and operate a COMs.
- New subsection 6a (COMAR 26.11.01.10B(6)(a)) states that owners and operators of MWCs may not cause or permit the discharge of emissions which exceed the visibility standards in COMAR 26.11.08.04 as determined by EPA Method 9 observations. COMAR 26.11.08.04, Control of Incinerators, Visible Emissions, is approved into the Maryland SIP and, as previously stated, Method 9 is an EPA approved method for determining compliance with VE standards. COMAR 26.11.08.01 defines incinerators to include those burning municipal waste, i.e., MWCs. This amendment is clarifying the standards for MWCs. Therefore, this amendment is approvable.
  - COMAR 26.11.08.04A(2) prohibits discharge of emissions from any hazardous waste incinerator that are “visible to human observers.” New subsection 6b (COMAR

26.11.01.10B(6)(b)) clarifies that, when using a COM, VE “visible to [a] human observer[s]” are equal to or greater than 10 percent opacity for the purpose of determining compliance with COMAR 26.11.08.04. COMAR 26.11.08.04 is already SIP-approved. As stated previously in this notice (in EPA’s discussion of COMAR 26.11.0110B(5)(c)), this interpretation of “not visible to human observers” was previously SIP-approved on page four of TM 90-01. Because new subsection 6b is merely moving SIP-approved provisions from discontinued TM 90-01 into Maryland’s COMAR regulations, this amendment is approvable.

- New subsection 6c (COMAR 26.11.01.10B(6)(c)) clarifies that for owners and operators of MWCs required to install and operate a COM, compliance with VE standards is achieved if VE do not exceed 10 percent opacity for a 6-minute block average during the unit's operating time. This 10 percent VE limit with a 6-minute average is consistent with the previously SIP-approved interpretation of “not visible to human observers” in TM 90-01 and the VE limits in EPA’s NSPS for MWCs at 40 CFR 60.52a(b) and 60.52b(a)(2). Therefore, this amendment is approvable.
- New subsection 6d (COMAR 26.11.01.10B(6)(d)) states that, notwithstanding the requirements in section B(6)(a) - (c), MDE may determine compliance with VE limits by performing EPA Method 9 observations. EPA reference Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources Observations, found in appendix A-4 to 40 CFR part 60, is an approved EPA test method for VE compliance. Therefore, this amendment is approvable.
- New subsection 6e (COMAR 26.11.01.10B(6)(e)) requires owners and operators of MWCs operating COMs to meet the quality assurance requirements under COMAR 26.11.31, Quality Assurance Requirements for Continuous Opacity Monitors (COMs).

COMAR 26.11.31 is approved into the Maryland SIP. This new subsection is clarifying existing, SIP-approved requirements. Therefore, this amendment is approvable.

5. MDE has repealed COMAR 26.11.01.10F and is requesting its removal from the SIP.

COMAR 26.11.01.10F required fuel burning equipment subject to the COM requirements in COMAR 26.11.09.05 and cement kilns subject to the COM requirements in COMAR 26.11.30 to meet the COM requirements contained in COMAR 26.11.31. COMAR 26.11.09.05, Visible Emissions, COMAR 26.11.30, Control of Portland Cement Manufacturing Plants, and COMAR 26.11.31, Quality Assurance Requirements for Continuous Opacity Monitors (COMs), are approved in the Maryland SIP. COMAR 26.11.31 is applicable to all source owners using COMs, as specified in COMAR 26.11.31.02. Thus, COMAR 26.11.01.10F is a redundant requirement. Therefore, removal from the SIP is approvable.

*B. Amendments to COMAR 26.11.08, Control of Incinerators*

MDE added a new section D to Regulation .04, Visible Emissions, under COMAR 26.11.08 (COMAR 26.11.08.04D). This new section D clarifies that owners of MWCs required to install and operate COMs are subject to the requirements in COMAR 26.11.01.10, Continuous Opacity Monitoring Requirements. As discussed previously, the new provisions in COMAR 26.11.01.10B(6) clarify COM requirements for the owners and operators of MWCs. This amendment clarifies existing, SIP-approved requirements by directing owners and operators of MWCs to COMAR 26.11.01.10 where the applicable COMs requirements are set out. Therefore, this amendment is approvable.

**III. Proposed Action**

EPA's review of this material indicates that Maryland's amendments to Regulation .10 under



COMAR 26.11.01, General and Administrative Provisions, and Regulation .04 under COMAR 26.11.08, Control of Incinerators, in Maryland's SIP Revision 16-04, related to COMs and VE requirements for cement plants and MWCs, clarify requirements in the existing Maryland SIP and are approvable. Therefore, EPA is proposing to approve Maryland's SIP Revision 16-04, which MDE submitted to EPA on May 10, 2016, except for the definitions of continuous burning and operating time that MDE withdrew from SIP Revision 16-04 on February 28, 2018. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **IV. Incorporation by Reference**

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference MDE's amendments to Regulation .10 under COMAR 26.11.01, General and Administrative Provisions, and Regulation .04 under COMAR 26.11.08, Control of Incinerators contained in SIP Revision 16-04. As described previously, the amendments to COMAR 26.11.01.10, Continuous Opacity Monitoring Requirements, are as follows: (1) Add a new section 6 to COMAR 26.11.01.10A, Applicability and Exceptions; (2) amend section 3 under COMAR 26.11.01.10B, General Requirements for COMs; (3) add new sections 5 and 6 under COMAR 26.11.01.10B; and (4) remove COMAR 26.11.01.10F, which has been repealed by the State. The amendment to COMAR 26.11.08, Control of Incinerators, consists of an addition of a new section D to Regulation .04, Visible Emissions. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, proposing to approve Maryland SIP Revision 16-04, COMs requirements for MWCs and Cement Plants, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter; Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: August 9, 2018.

Cecil Rodrigues,  
Acting Regional Administrator,  
Region III.

[FR Doc. 2018-18276 Filed: 8/22/2018 8:45 am; Publication Date: 8/23/2018]